



ALLEN & OVERY

BY EMAIL

Hon. Katherine B. Forrest
United States District Court
Southern District of New York
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New York, NY 10007
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June 24, 2013

Re: SEC v. Fabrice Tourre, Case No. 10-cv-3229 (KBF)

Dear Judge Forrest:

Together with the Law Office of John P. Coffey, we represent Defendant Fabrice Tourre in the above-referenced litigation. We write in response to the SEC's June 21 letter requesting that this Court enter an order compelling us to complete our review and evaluation of the belatedly produced ACA tapes in the next few days.

As the Court is well aware, the SEC failed to obtain ACA voice recordings either in its two year investigation (2008-2010) or during the discovery period in this case (2010-2012). The Court's denial of our motion to preclude the ACA tape has left us, in the critical weeks before trial, with the need to obtain, review, analyze and potentially take remedial discovery related to eight thousand ACA tapes. These tapes were received by us between May 10, 2013 and June 10, 2013, with approximately 1,300 voice recordings arriving at our office two weeks ago today. We have diligently been reviewing the voice recordings despite the enormous demands and time constraints of simultaneously preparing for trial.

We agreed last Friday to provide to the SEC today a list of voice recordings we have identified to date that we plan to use at trial, a fact omitted by the SEC's choice to submit only part of the relevant email chain with its June 21 letter. The entire e-mail chain is attached hereto as Ex A (6/21/13 email Davies/Martens). We also informed the SEC that our initial review of the eight thousand voice recordings is approximately 80% complete. Our second review and analysis is obviously less complete.

The SEC's request that we be ordered to conclude our review on a timetable more convenient to it is highly inappropriate given that our need to undertake this enormous project during the final weeks of

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trial preparation is the direct result of the SEC's discovery failures. The SEC cannot be allowed to take strategic advantage of a crisis situation created by its own discovery failings.

Respectfully submitted,


Pamela Rogers Chepiga

Copy via email: John P. Coffey

Matthew Martens, SEC
Richard Simpson, SEC
Christian Schultz, SEC
Bridget Fitzpatrick, SEC

Ordered

We will discuss this
issue at the final pre-trial
conference on July 9, 2013.
(Defendant will need to complete the
verdict an hour by 7/11/13).

6/25/13

← B. Form
USDJ

EXHIBIT A

Chepiga, Pamela:LT (NY)

From: Davies, Andrew Rhys:LT (NY)
Sent: Friday, June 21, 2013 5:55 PM
To: 'Martens, Matthew'; Chepiga, Pamela:LT (NY); O'Neil, Brandon:LT (NY); 'seancoffey78@gmail.com'
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Cheatham, Allie:LT (NY)
Subject: RE: SEC v. Tourre (0018147-0000152)

Categories: Copied to Virtual File

Matt: Our first-level review of the tapes is approximately 80% complete. Although it's difficult to be precise about timing, as we said in our filing yesterday, we don't expect to complete the review for another two to three weeks. As I said in my email earlier, we will send you by close of business on Monday the list of recordings that we presently expect to offer in our case in chief.

Regards,
Andrew

From: Martens, Matthew [mailto:MartinM@SEC.GOV]
Sent: Friday, June 21, 2013 2:15 PM
To: Davies, Andrew Rhys:LT (NY); Chepiga, Pamela:LT (NY); O'Neil, Brandon:LT (NY); 'seancoffey78@gmail.com'
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Cheatham, Allie:LT (NY)
Subject: RE: SEC v. Tourre (0018147-0000152)

Andrew,

I expect to be able to identify for you at close of business on Monday all of the recordings that the SEC intends to introduce in its case-in-chief.

Regards,
--Matt

From: Andrew.Rhys.Davies@allenoverly.com [mailto:Andrew.Rhys.Davies@allenoverly.com]
Sent: Friday, June 21, 2013 1:26 PM
To: Martens, Matthew; Pamela.Chepiga@AllenOverly.com; Brandon.O'Neil@AllenOverly.com; seancoffey78@gmail.com
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Allie.Cheatham@AllenOverly.com
Subject: RE: SEC v. Tourre (0018147-0000152)

Matt: I'm getting an updated progress report and will be happy to share that information with you later this afternoon, on the understanding that you will this afternoon provide us the same information from the SEC's side. I expect to be in a position to send the report at 5pm.

Andrew

From: Martens, Matthew [mailto:MartinM@SEC.GOV]
Sent: Friday, June 21, 2013 10:47 AM
To: Davies, Andrew Rhys:LT (NY); Chepiga, Pamela:LT (NY); O'Neil, Brandon:LT (NY); 'seancoffey78@gmail.com'
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Cheatham, Allie:LT (NY)
Subject: RE: SEC v. Tourre (0018147-0000152)

Andrew,

What percentage of the recordings have you reviewed, and when would you expect to provide us with the rest of your list of recordings?

--Matt

From: Andrew.Rhys.Davies@allenoverly.com [mailto:Andrew.Rhys.Davies@allenoverly.com]
Sent: Friday, June 21, 2013 10:43 AM
To: Martens, Matthew; Pamela.Chepiga@AllenOverly.com; Brandon.O'Neil@AllenOverly.com; seancoffey78@gmail.com
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Allie.Cheatham@AllenOverly.com
Subject: RE: SEC v. Tourre (0018147-0000152)

Matt:

We propose Monday at 4pm for the voir dire and jury charge, and Wednesday at 10am for the exhibits and depositions. Please let us know whether those times work.

As to your request to set a date for the exchange of lists of ACA audio recordings, we are still in the midst of reviewing these tardily-produced materials, but we are willing to send you by close of business on Monday the list of recordings that we presently expect to offer in our case in chief.

Regards,
Andrew

From: Martens, Matthew [mailto:MattensM@SEC.GOV]
Sent: Friday, June 21, 2013 8:39 AM
To: Davies, Andrew Rhys:LT (NY); Chepiga, Pamela:LT (NY); O'Neil, Brandon:LT (NY); 'seancoffey78@gmail.com'
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Cheatham, Allie:LT (NY)
Subject: RE: SEC v. Tourre

Andrew,

As a follow-up to our call yesterday, can you propose some times for our meet-and-confers next Monday and Wednesday?

Also, please advise today whether you are willing to exchange by COB Monday the lists of recordings that will be used at trial. If not, I will need to raise that issue with the court today.

Regards,
--Matt

From: Martens, Matthew
Sent: Wednesday, June 19, 2013 12:58 PM
To: 'Andrew.Rhys.Davies@allenoverly.com'; 'Pamela.Chepiga@allenoverly.com'; 'Brandon.O'Neil@AllenOverly.com'; 'seancoffey78@gmail.com'
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; 'Allie.Cheatham@AllenOverly.com'
Subject: Re: SEC v. Tourre

Andrew,

We could meet on Monday to discuss voire dire and jury charge. Tuesday does not work for us to meet regarding exhibits and deposition designations, but we could do that on Wednesday.

As for recordings, we are happy to agree to a date on which we each side identifies the recordings that each side intends to use. We would propose that this occur on Friday, but we are open to suggestions on that point.

Regards,
--Matt

From: Andrew.Rhys.Davies@allenoverly.com [<mailto:Andrew.Rhys.Davies@allenoverly.com>]
Sent: Wednesday, June 19, 2013 12:17 PM
To: Martens, Matthew; Pamela.Chepiga@AllenOverly.com <Pamela.Chepiga@AllenOverly.com>; Brandon.O'Neil@AllenOverly.com <Brandon.O'Neil@AllenOverly.com>; seancoffey78@gmail.com <seancoffey78@gmail.com>
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Allie.Cheatham@AllenOverly.com <Allie.Cheatham@AllenOverly.com>
Subject: Re: SEC v. Tourre

Matt:

Now that we have Judge Forrest's ruling, we propose to get you our supplemental exhibits and exhibit objections on Friday. Then we propose to have the meet and confer on the jury charge and voir dire on Monday and the meet and confer on the exhibits and deposition designations on Tuesday.

We have to respond to the motions to quash the Lucas Westreich and Keith Gorman subpoenas tomorrow. As ACA has now produced telephone recordings from their lines, to respond to these motions we need to know whether the SEC intends to use any ACA calls in addition to the January 17 call. Please would you let us know.

Regards,
Andrew

From: Martens, Matthew [<mailto:MartensM@SEC.GOV>]
Sent: Wednesday, June 19, 2013 11:48 AM
To: Davies, Andrew Rhys:LT (NY); Chepiga, Pamela:LT (NY); O'Neil, Brandon:LT (NY); 'seancoffey78@gmail.com' <seancoffey78@gmail.com>
Cc: Simpson, Richard <SimpsonR@SEC.GOV>; Schultz, Christian <SchultzC@SEC.GOV>; Fitzpatrick, Bridget <FitzpatrickBr@SEC.GOV>; Cheatham, Allie:LT (NY)
Subject: RE: SEC v. Tourre

Andrew,

Just following up as to a proposed time.

Regards,
--Matt

From: Martens, Matthew
Sent: Tuesday, June 18, 2013 7:05 PM
To: 'Andrew.Rhys.Davies@allenoverly.com'; 'Pamela.Chepiga@AllenOverly.com'; 'Brandon.O'Neil@AllenOverly.com'; 'seancoffey78@gmail.com'
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; 'Allie.Cheatham@AllenOverly.com'
Subject: RE: SEC v. Tourre

Andrew,

I have spoken with Mr. Davidson about his willingness to accept service, as I am not his counsel. He advised that you can email a subpoena to him at andy@ad-co.com. Of course, this should not be taken as our agreement that Mr. Davidson can be called as a fact witness by you. To the contrary, we intend to raise that issue with the Court shortly.

We are available tomorrow for a scheduling call. Please propose a time.

Regards,
--Matt

From: Andrew.Rhys.Davies@allenoverly.com [<mailto:Andrew.Rhys.Davies@allenoverly.com>]
Sent: Tuesday, June 18, 2013 6:42 PM
To: Martens, Matthew; Pamela.Chepiga@AllenOverly.com; Brandon.O'Neil@AllenOverly.com; seancoffey78@gmail.com
Cc: Simpson, Richard; Schultz, Christian; Fitzpatrick, Bridget; Allie.Cheatham@AllenOverly.com
Subject: Re: SEC v. Tourre

Matt:

We raised with you several weeks ago whether you can facilitate our service of a trial subpoena on Andrew Davidson. Please would you let us know, failing which we will make our own arrangements tomorrow.

Please would you also let us know whether you are available tomorrow for the scheduling call referenced in Sean's email earlier this afternoon.

Regards,
Andrew

From: Martens, Matthew [<mailto:MartensM@SEC.GOV>]
Sent: Tuesday, June 18, 2013 05:43 PM
To: Davies, Andrew Rhys:LT (NY); Chepiga, Pamela:LT (NY); O'Neil, Brandon:LT (NY); 'seancoffey78@gmail.com' <seancoffey78@gmail.com>
Cc: Simpson, Richard <SimpsonR@SEC.GOV>; Schultz, Christian <SchultzC@SEC.GOV>; Fitzpatrick, Bridget <FitzpatrickBr@SEC.GOV>
Subject: SEC v. Tourre

Counsel,

Please note that hard copies of the SEC's motions *in limine* filed yesterday and today were or are being delivered to your offices, as set forth in the certificates of service, in accordance with Federal Rule of Civil Procedure 5(b)(2)(B).

Regards,
--Matt

Matthew T. Martens
Chief Litigation Counsel
U.S. Securities and Exchange Commission
Division of Enforcement
100 F Street, NE
Washington, DC 20549
(202) 551-4481

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